IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1694 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

MUZFAL @ GUDU ISMAILBHAI KACH WALA (VORA)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1694 of 2001

MR II SHAIKH for Petitioner No. 1

Mr. HL Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/06/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Shaikh for the petitioner and Mr. Jani, learned AGP for the respondent State. In this petition, the petitioner has challenged the impugned order of detention dated 20.10.2000 passed by the detaining authority under section 3(1) of the

Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short). The grounds of detention have been communicated to the petitioner under section 9(1) of the PASA Act and the petitioner has been detained at Rajkot Jail as Class II Detenu. In all, only one offence namely Navrangpura CR No 0670 of 2000 has been registered against the petitioner under section. 398, 399, 400 of the Indian Penal Code and sec. 135(1) of the Bombay Police Act and section 25(1)(A) of the Arms Act. The detaining authority has claimed privilege under section 9(2) of the PASA Act. As per the grounds of detention, in all four co-detenues are there. There was no previous history of the petitioner. The statements of secret witnesses have been recorded on 16th October, 2000 as well as on 17th October, 2000 and both the statements of the secret witnesses have been verified by the detaining authority on 19th October, 2000 and on the very next day i.e. on 20th October, 2000, impugned order of detention has been passed by the detaining authority.

Learned advocate Mr. Shaikh appearing for the petitioner has raised two contention. His first contention is to the effect that only one offence has been registered against the petitioner as per the grounds of detention namely CR No. 670 of 2000 dated 12.10.2000. According to him, the co-detenues in respect of whom also, the detention order has been passed have been on the same day i.e. 20.10.2000. He has submitted that Rajeev @ Kishor Upendranath Shukla is co-detenu and Faridkhan alias Firozkhan Sadik Khan Pathan is also co-accused as well as co-detenu. He has submitted that the detention order passed in respect of the aforesaid co-detenu was challenged before this court in special civil application no. 12335 of 2000 and this Court (Coram : S. K. Keshote,J.) by judgment and order dated 14.2.2001 has quashed and set aside the impugned order of detention in respect of Rajiv alias Kishor Upendranath Shukla and the order of detention passed in respect of Faridkhan alias Firozkhan Sadik Khan Pathan was challenged in special civil application no. 1695 of 2001 and the same has been quashed and set aside by this court by judgment and order dated 8.5.2001. He has placed copies of the judgment in both the aforesaid petitions in respect of the co-detenues. In this matter, the respondent State has filed affidavit in reply which is on the record of this petition. He has contended that if only one offence has been registered against the petitioner and if there is no previous antecedents, then, the detaining authority is not justified in passing the impugned order of detention. He has placed reliance upon the apex court decision reported in AIR 1990 SC 516. As

regards the contention that the statements of the secret witnesses were verified on 19th October, and passing of the impugned order of detention, reliance has been placed on 2000(3) GLR 2696 in case of Ranubhai Bhikhabhai Bharwad (vekaria) versus State of Gujarat, by submitting that there was no application of mind in passing the impugned order of detention.

Learned AGP Mr. Jani has supported the impugned order of detention and has submitted that the detaining authority has considered that the petitioner is a dangerous person and, therefore, there was no option but to detain the petitioner under the PASA Act and, therefore, this Court should not interfere with the same. He has also submitted that the detailed affidavit in reply has been filed by the State Government explaining the situation and, therefore, according to Mr. Jani, the impugned order of detention has rightly been passed by the detaining authority and, therefore, this Court should not interfere with the same and therefore, this petition is required to be dismissed.

I have considered the arguments of the learned advocates for the respective parties. I have considered the contentions raised by the learned advocate Mr. Shaikh.

In case of Anand Prakash versus State of U.P. reported in AIR 1990 516, the apex Court has held as under in para 11 of the report :

"The detaining authority though can take into account the possibility of the The detaining authority though can take into account the possibility of the detenu being released on bail in the criminal proceedings, have to be satisfied, having regard to his past activities or by reason of the credible information or cogent reasons, that if he is enlarged on bail, he would indulge in such criminal activities. The detention order cannot be passed in order to supplant the criminal prosecution.

Thus the detaining authority though can take into account the possibility of the detenu being released on bail in the criminal proceedings,. have to be satisfied, having regard to his past activities or by reason of the credible information or cogent reasons, that if he is enlarged on bail, he would indulge in such

criminal activities. In the present case except the bald statement that the detenu would repeat his criminal activities after coming out of the jail, there are no credible information or material or cogent reasons apparent on the record to warrant an inference that the detenu if enlarged on bail would indulge in such criminal activities which are prejudicial to the maintenance of essential services. There must be something more than what is found in the record here to come to the conclusion that this is not a case of solitary incident but a case of the detenu indulging in business of receiving stolen electric wires."

I have also considered the decision reported in 2000(3) GLR page 2696. Relevant observations are as under:

"After referring to Kalidas C. Kahar v. State of Gujarat, 1993 (2) GLR 1659, the Court observed:

The statements of the three witnesses in the instant case which were recorded before the [police inspector on 17th August, 1999, 21st August, 1999 and 25th August, 1999 with regard to the incidents dated 10th July, 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August, 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August, 1999 at any time prior to 29th August, 1999 and on 29th August 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e., on 30th August, 1999 the detention order has been passed. (Para. 9).

The manner in which the verification has been recorded of the made by these three witnesses for the purpose of section 9(2) shows that the same has been done only as an empty formality in as much as the same witnesses had been called before the detaining authority and the detaining

authority had recorded that whatever statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege under Section 9 (2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power u/S. 9(2) and it is established that in such case the wrong exercise of power u/S. 9(2) adversely affects detenu's right of making an effective representation guaranteed under Article 22(5) of the Constitution of India. (Para. 9).

Once the materials are placed before the detaining authority with the proposal by the sponsoring authority it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege u/S. 9(2) of the PASA Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August, 1999 i.e. on the next day to the date on which the materials were considered by the detaining authority."

Looking to the observations made hereinabove, according to my opinion, the impugned order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the

petition succeeds and the same is allowed. The order of detention dated 20.10.2000 is vitiated and resulted to quash and set aside. The detenu Muzfal alias Gudu Ismailbhai Kachwala (Vora) who has been detained at the Rajkot Jail be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

13.6.2001. (H.K. Rathod,J.)
Vyas